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against the other to have an account of the smuggling transaction?" So, too, a court of equity will not make a defendant clean up his hog pen when plaintiff's hogs are on his own premises just across the alley "in manure up to their knees," *Cassady v. Cavenor* (1873), 37 Ia. 300; nor has a member of an illegal combination of coal dealers clean enough hands to enjoin a city from engaging in the coal business without authority, *Baker v. City of Grand Rapids* (1906), 142 Mich. 687, 106 N. W. 209. One literary pirate is not entitled to the protection of a court of equity against another sinning in the same way, *Edward Thompson Co. v. Am. L. B. Co.* (1903), 122 Fed. 922; see, also, *Manhattan Medicine Co. v. Wood* (1882), 108 U. S. 218; *Medford v. Levy* (1888), 31 W. Va. 649, 31 Am. St. R. 887; *Hilson Co. v. Foster* (1897), 80 Fed. R. 896 *Nebraska Tel. Co. v. Western Ind. Tel. Co.* (1903), 68 Neb. 772, 95 N. W. 18; *Woodson v. Hopkins* (1905), 85 Miss. 171, 37 So. 1000; *Toledo Computing Scale Co. v. Computing Scale Co.* (1906), 142 Fed. R. 919. Compare, however, *Sharp v. Taylor*, 2 Phil. Ch. 801; *Dering v. Earl of Winchester*, 1 Cox 318, 21 E. R. 617; *Foster v. Winchester*, 92 Ala. 497. Courts, however, will hear a plaintiff who has repented of his former iniquity, washed his hands, and will give relief against the future illegal acts of his competitors, *Employing Printers' Club v. Doctor Blosser Co.* (1905), 122 Ga. 509, 50 S. E. 353.

It has sometimes been said that this maxim is a principle running through the law, and has prevented a murderer from becoming the heir, devisee, or beneficiary of the one he murders,—*Riggs v. Palmer*, 115 N. Y. 506; *N. Y. Mut. L. Ins. Co.*, 117 U. S. 591; the weight of authority, however, seems to be the other way, except in insurance cases. *Owens v. Owens*, 100 N. C. 240; *Shellenbarger v. Ransome*, 41 Neb. 631, 25 L. R. A. 564; *McAllister v. Fair*, 72 Kans. 533, 115 Am. St. R. 233.

H. L. W.

THE KANSAS-COLORADO WATER CASE.—The law recognizes two directly opposed rules governing the rights which may be acquired in flowing waters. The familiar common law rule of riparian rights, supported by a long line of uniform decisions, allows the use but not the consumption of the waters of a stream; the doctrine of prior appropriation gives to the first appropriator the right to enjoy a continuance of such appropriation.

The latter doctrine arose in California, shortly after the discovery of gold, from the necessities of the existing conditions. There being no law applicable to the new conditions, the miners held meetings and adopted regulations, by which they agreed to be bound; and since large quantities of running water were essential to the operation of the placer mines, it soon became settled that the right to divert a definite quantity of water from rivers could be acquired by prior appropriation. GOULD, WATERS, § 228, 17 AM. & ENG. ENC. OF LAW, 494.

The aridity of vast tracts of land necessitated extensive irrigation in order that such land might be cultivated, and as a natural consequence, the doctrine of prior appropriation was soon extended to irrigation. This rule, evolved by custom, was made available against the general government by Act of

Congress of 1866, and has been adopted by either constitutional provision or statute in nearly all of the western states.

The extent to which the first taker was limited was the quantity of water which he applied to the beneficial use of the land. *Barrows et al. v. Fox et al.*, 98 Cal. 63, 17 AM. & ENG. ENC. OF LAW, 502.

The inevitable disputes arising between appropriators on the same stream have caused a great amount of litigation, and various solutions have been attempted. The courts of California have declared that a court of equity may determine the respective rights of the various appropriators and regulate the use of the waters, so that the equality of rights in the enjoyment of common property will be maintained. And the court may enjoin any interference with the legally established rights of a prior appropriator. *Frey et al. v. Lowden et al.*, 70 Cal. 550. Colorado has expressly vested a similar jurisdiction in the district courts. MILL'S ANN. STAT., § 2399.

This question of the rights of riparian owners on the same stream was presented to the Supreme Court of Kansas in *Clark v. Allaman*, 71 Kan. 206. The court said in that case that the use of water for irrigation purposes must be reasonable under all circumstances. And, in further interpreting the word "reasonable," it is said that "in determining the quantity of land, tributary to and lying along a stream which a single proprietor may irrigate, the principle of equality of right with others should control, irrespective of the accidental matter of governmental subdivisions of the land."

This equitable doctrine, applied in the case just cited to riparian owners within the same jurisdiction, has recently been made the basis for the determination of the respective rights of two states in the waters of a river which flows through them.

This interesting controversy was decided for the first time by the United States Supreme Court in May, in the case of *The State of Kansas v. The State of Colorado et al., The United States of America, Intervener*, 27 Sup. Ct. 655.

The dispute arose over the conflicting interests of Kansas and Colorado and their citizens in the waters of the Arkansas River, which flows through Eastern Colorado and Southwestern Kansas. Because of the broad valley through which the river flows, its slight fall, and seasonal dryness, the use for irrigation purposes is the only practical one to which its waters may be subjected.

Protesting that Colorado and certain private corporations were depriving her citizens of the accustomed flow of water in the river, Kansas, acting as *parens patriæ*, brought a bill in equity to enjoin such excessive use of the water. The United States intervened, claiming that the rights of both parties were subordinate to its right of control for the purpose of reclaiming the arid lands. In delivering the opinion of the court, Mr. Justice BREWER stated the ultimate controversy to be "whether Kansas has a right to the continuous flow of the waters of the Arkansas river, as that flow existed before any human interference therewith; or Colorado the right to appropriate the waters of that stream, so as to prevent that continuous flow; or that the amount of the flow is subject to the superior authority and supervisory control of the United States."

The petition in intervention was dismissed without prejudice to the right of the national government to take any action necessary to preserve or improve the navigability of the river, since the Constitution grants to Congress no power for the reclamation of arid land. It is pointed out by the court that Congress has full power to legislate concerning arid lands within the territories. And it is also decided that lands belonging to the national government, and lying within one of the states, are a proper subject for Congressional legislation; but such legislation cannot override the laws of the state in which the lands are situated. Each state has full jurisdiction over the lands within its borders. *Barney v. Keokuk*, 94 U. S. 324; *Hardin v. Jordan*, 140 U. S. 371; *Shively v. Bowlby*, 152 U. S. 1.

The important question was the one concerning the respective rights of two neighboring states in the waters of a river, flowing through both of them; one of the states generally recognizing the common law rule of riparian rights and the other the doctrine of prior appropriation. (To the effect that Kansas upholds the common law rule, see *Shamleffer v. Peerless Mill Co.*, 18 Kan. 24; *Mo. Pac. Ry. Co. v. Keys*, 55 Kan. 205; and that Colorado maintains the doctrine of prior appropriation, see *Hammond v. Rose*, 11 Colo. 524; *Strickler v. City of Colo. Springs*, 16 Colo. 61; *Lower Latham D. Co. v. Louden Irr. C. Co.*, 27 Colo. 267.)

The State of Colorado, in the extreme of its contention, claimed that it had a right to appropriate all the waters of this stream for the purposes of irrigating its soil and making more valuable its own territory; while the ultimate contention of Kansas was that the flowing water must be left to flow as always, no part of it being taken for irrigation by Colorado. The court held that such a dispute between two sovereigns was of a justiciable nature and cognizable by the court.

While Kansas generally maintains the common law rule, still, as pointed out above, it has at times recognized the right of appropriation for irrigation purposes, subject to an equitable division among the various riparian proprietors. (See *Clark v. Allaman*, supra.) And the court ruled that since Kansas had made this recognition, she could not complain of the enforcement of the same rule between herself and Colorado.

One cardinal rule governing relations between the states is equality of right, and in pursuance of this rule the court decided that it was justified in broadly considering the effects upon Kansas, resulting from any appropriations which Colorado might make from the flow.

The court then proceeded to examine the voluminous record of the evidence, which included many census statistics bearing on the relative productiveness of the areas drained by the Arkansas river in each state. And from this examination, it was determined that irrigation in Colorado had caused a material detriment to a portion of Kansas, but that it had resulted in great benefit to Colorado by making possible the reclamation of vast tracts of previously arid land. The conclusion was that the equality of right existing between the two states required the dismissal of the petition of Kansas, without prejudice, however, to the latter's right to institute new proceedings whenever it should appear that through a material depletion of

the flow by Colorado, the equitable apportionment of benefits between the two states was being destroyed.

A rather surprising contention on the part of Colorado was that there were two Arkansas rivers, one ending in Colorado near the state line, and the other springing up farther on in Kansas; thus, leaving Kansas with no rights whatever in the so-called Colorado-Arkansas. The court, however, held that the river was continuous, although parts of the bed were at times entirely dry.

The rule, laid down by the court, seems to be an equitable compromise between the common law rule governing the rights of riparian owners and the doctrine of the prior appropriation of waters.

The law announced then is, that where a river flows through two states, each state has a right to appropriate the waters for its needful purposes, even though it causes injury to the other, so long as the amount of the appropriation by either does not destroy the balance of equality existing between them.

R. M. S.

EQUITABLE JURISDICTION TO CANCEL FRAUDULENT PUBLIC RECORDS.—The inherent power of a Court of Equity to meet new conditions and adjust its procedure and remedies to new situations is well illustrated by the decision of JUDGE DILL in *Vanderbilt v. Mitchell et. al.*, in the New Jersey Court of Errors and Appeals, June 17, 1907, 67 Atl. Rep. 97. The statutes of New Jersey require the filing of certificates of birth, and make it the duty of the attending physician to transmit to the Superintendent of the Bureau of Vital Statistics a certificate setting forth the date and place of birth, name of each parent, maiden name of the mother, name of the child, and name of the attending physician. The law also provides that a copy, under the hand of the superintendent, "Shall be received in evidence in any court of said state to prove the facts therein contained." There is no provision in the statutes for the correction, modification or annulment of the record, in case of fraud or mistake.

The plaintiff, John Vanderbilt, filed a bill against Myra Vanderbilt, his wife; William Vanderbilt, infant son of the wife, and Henry Mitchell, superintendent of the Bureau of Vital Statistics of New Jersey, alleging that he and his wife had lived together for only two months after marriage; that for nearly two years after the separation his wife had lived with a third party named, in adultery; that the child was the result of the adulterous intercourse; that upon the birth of the child the wife falsely stated to the attending physician that the plaintiff was the father of the child, that it was lawfully born, and that the physician, believing these statements to be true, inserted them in the birth certificate to the Bureau of Vital Statistics, where it was duly filed and recorded; that the purpose of such certificate was to assert and maintain for said child all the rights of a legitimate son. The bill further stated that the mother of the plaintiff had created a testamentary trust, from which the plaintiff received an income during his life, and had a vested remainder in himself and his lawful heirs, to take effect after the death of